

ORIGINAL

OPEN MEETING ITEM

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS



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EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

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2012 APR 23 A 11:43

DATE: APRIL 23, 2012
DOCKET NO.: E-01851A-11-0415

AZ CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Jane L. Rodda. The recommendation has been filed in the form of an Order on:

COLUMBUS ELECTRIC COOPERATIVE, INC
(DECLARATORY ORDER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MAY 2, 2012

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MAY 10, 2012

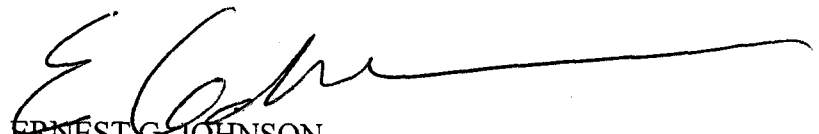
For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE PETITION OF
9 COLUMBUS ELECTRIC COOPERATIVE, INC.
10 FOR A DECLARATORY ORDER.

DOCKET NO. E-01851A-11-0415

DECISION NO. _____

11 **ORDER**

12 Open Meeting
13 May 22 and 23, 2012
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 * * * * *

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. Columbus Electric Cooperative Inc. ("Columbus" or "Cooperative") is a non-profit,
21 member-owned electric distribution cooperative headquartered in Deming, New Mexico, that
22 provides electric service to approximately 4,730 meters in southwestern New Mexico and 468 meters
23 in Cochise County, Arizona.

24 2. On November 18, 2011, Columbus filed with the Commission a Petition for a
25 Declaratory Order confirming that A.R.S. §§ 40-301, 40-302, 40-303 and 40-285 do not apply to
26 Columbus in relation to past or future secured loan transactions; or alternatively, for retroactive
27 approval of three secured loans and related mortgages, and the expedited approval to prepay and
28 refinance certain loans.

3. Columbus and the Commission's Utility Division ("Staff") participated in a telephonic
Procedural Conference on January 5, 2012, to discuss procedures for processing the Cooperative's
request. Columbus expressed the desire to process the refinancing request as quickly as possible to

1 take advantage of currently low interest rates. The parties agreed to bifurcate the request, with the
2 refinancing addressed first and the Declaratory Petition to be addressed following an Order in Phase
3 I. A Procedural Order dated January 5, 2012, bifurcated the Declaratory Petition from the
4 financing/refinancing request.

5 4. On March 7, 2012, Columbus filed an affidavit of publication indicating that the
6 Cooperative published notice of its refinancing application in *The Arizona Range News* and the
7 *Douglas Dispatch*, both weekly newspapers of general circulation in Cochise County, on February
8 15, 2012.

9 5. On March 20, 2012, Staff filed a Staff Report addressing the retroactive financing and
10 refinancing requests. Columbus did not file a Response to the Staff Report.

11 6. The Commission authorized Columbus' current rates in Decision No. 71792 (July 12,
12 2010). The Cooperative's rates in Arizona are identical to its rates in New Mexico.

13 7. Staff states that Columbus has no outstanding compliance issues.

14 8. In this portion of the proceeding, without waiving its request for exemption, Columbus
15 seeks retroactive approval of three loans secured by a mortgage and obtained through the United
16 States Department of Agriculture, Rural Utility Service ("RUS"), the National Rural Utilities
17 Cooperative Finance Corporation ("CFC"), and the Federal Financing Bank ("FFB") of RUS. The
18 last time Columbus sought Commission approval for a financing was in 1994.¹ Subsequent to that
19 time, Columbus entered into three additional long-term loans, but did not seek approval from the
20 Commission on the advice of its counsel.² The three loans in question were approved by the New
21 Mexico Public Regulatory Commission. All but these three of the Cooperative's long-term loans
22 have been approved by the Commission. The three loans which are the subject of this proceeding are
23 as follows:

- 24 (a) Loan No. NM 25 AE61 Luna, dated November 25, 1997, in the amount of
25 \$3,289,000, with \$2,960,000 provided by RUS and \$329,000 from CFC;

26 _____
27 ¹ Docket No. E-01851A-94-0032.

28 ² Application at 3 and Exhibit A. Columbus' counsel opined, based on Arizona Attorney General Opinion No. 69-10, that because Columbus is a foreign corporation engaged in interstate commerce, and which owns facilities in more than one state, Commission approval is not required based on restrictions of the interstate commerce clause. In Phase II of this proceeding, the Commission will address this issue directly.

(b) Loan No. NM 25 AG61 Luna, dated October 22, 2002, in the amount of \$7,902,000, with \$7,112,000 provided by RUS and \$790,000 from CFC; and

(c) Loan No. NM 23 AH61 Luna, dated April 22, 2008, in the amount of \$12,866,000 all of which was provided by the FFB of RUS.

9. As of July 31, 2011, the principal owing on these three loans was \$17,830,168.

10. In addition to the retroactive approval of the three loans described above, the Cooperative also seeks expedited approval to prepay certain loans from RUS, totaling approximately \$3,213,431, and to refinance them with notes from the CFC having similar maturity dates and lower interest rates. The interest rate on the RUS debt that the Cooperative seeks to refinance is fixed at 5 percent per year. Columbus anticipates refinancing the notes at an effective interest rate of 4.11 percent per year, and saving \$317,303 over the life of the loans. The effective interest rate could fall to 3.86 percent per year after consideration of anticipated patronage capital credits from CFC. The refinancing can be accomplished without a prepayment penalty. Staff states that the Cooperative has indicated that it will not refinance if the average effective interest rate on the new debt would exceed 4.5 percent per year.³

11. Staff reviewed the capital improvement projects funded by the proceeds of the three loans requested for retroactive approval and concluded that the projects were appropriate and the costs reasonable. The loan proceeds financed capital projects related to new underground and overhead distribution lines for line extensions, subdivisions and other new services; new feeders and tie lines, and changes in distribution lines; as well as miscellaneous upgrades such as pole mounted transformers, voltage regulators and metering equipment, and the like. Staff states that it made no "used and useful" determination pertaining to the proposed capital improvements, and is not reaching any conclusions for rate base or ratemaking purposes.

12. Staff performed a financial analysis based on the Cooperative's financial information for the year ended July 31, 2011. Columbus' July 31, 2011, financial statements already reflect the notes for which it seeks retroactive approval. As of July 31, 2011, Columbus' capital structure

³ Staff Report at 1-2; Application at 4-5.

1 consisted of 2.5 percent short-term debt, 66.9 percent long-term debt and 30.6 percent equity.⁴

2 13. As of July 31, 2011, Columbus had a Debt Service Coverage ("DSC") ratio of 1.67,
3 which indicates that cash flow from operations is sufficient to cover its debt obligations.⁵

4 14. Refinancing a portion of the RUS debt with notes of similar maturities, but at a lower
5 interest rate, will improve the DSC slightly. Refinancing the RUS debt will not alter the capital
6 structure, as the overall amount of debt will not change.

7 15. The loans for which Columbus is seeking retroactive approval and the notes proposed
8 to be refinanced are subject to encumbrance of the Cooperative's assets and revenues.

9 16. Staff notes that A.R.S. § 40-285 requires public service corporations to obtain
10 Commission authorization to encumber certain utility assets. Staff states that the statute serves to
11 protect captive customers from a utility's disposal of any of its assets that are necessary for the
12 provision of service, thereby pre-empting any service impairment. Staff also states that pledging
13 assets as security typically provides benefits to the borrower by increasing access to capital or
14 preferable interest rates, and that it is often an unavoidable condition of borrowing.

15 17. Staff concluded that the Cooperative's proposal to refinance approximately
16 \$3,213,431 of RUS debt with CFC notes having similar maturities and at a lower interest rate is
17 appropriate.

18 18. Staff further concluded that issuance of the proposed debt financing and refinancing
19 for the purposes stated in the application is within Columbus' corporate powers, is compatible with
20 the public interest, will not impair the Cooperative's ability to provide services and is consistent with
21 sound financial practices.

22 19. Staff recommends:

23 (a) Granting retroactive approval of the three loans: Loan No. NM 25 AE61 Luna,
24 Loan No. NM 25 AG61 Luna, and Loan No. NM 23 AH61 Luna;

25 (b) Granting authorization to refinance approximately \$3,213,431 of RUS debt with

26 ⁴ Columbus has a \$1,500,00 line of credit with the CFC, which it executed on March 22, 2011. The long-term portion of
Columbus' capital structure, as of July 31, 2011, consisted of long-term debt of \$17,830,168 and \$823,664 outstanding on
the line of credit.

27 ⁵ DSC represents the number of times internally generated cash will cover required principal and interest payments on
28 short-term and long-term debt. A DSC greater than 1.0 indicates that cash flow from operations is sufficient to cover debt
obligations. A DSC less than 1.0 means that debt service obligations cannot be met by cash generated from operations
and that another source of funds is needed to avoid default.

CFC refinancing notes in amount(s) not to exceed the remaining outstanding balance(s) at the date refinanced, with maturity dates and amounts not significantly different than those contemplated by Exhibit C of the Cooperative's filing, and at an effective average interest rate not to exceed 4.5 percent per year;

(c) Granting Columbus authorization to pledge its assets in the State of Arizona pursuant to A.R.S. § 40-285 in connection with any indebtedness authorized in this proceeding;

(d) Establishing December 31, 2012, as the expiration date for any unused authorization granted in this proceeding to refinance debt;

(e) Authorizing Columbus to engage in any transaction and to execute any documents necessary to effectuate the authorizations granted;

(f) Establishing as a compliance item in this matter, that Columbus file with Docket Control, within 60 days of the execution of any financing transaction authorized herein, a notice confirming that such execution has occurred, and a certification by an authorized officer that the terms of the financing fully comply with the authorizations granted; and

(g) Requiring Columbus to make available to Staff, upon request, a copy of any loan documents executed pursuant to the authorization granted herein.

20. Staff's recommendations are reasonable and should be adopted.

21. In accordance with the provisions of the January 5, 2012, Procedural Order, the parties should consult with each other and file procedural recommendations for the resolution of the Declaratory Petition.

CONCLUSIONS OF LAW

1. Columbus is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-301, 40-302, and 40-303.

2. The Commission has jurisdiction over Columbus and of the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. The financing as approved herein is for lawful purposes within Columbus' corporate powers, is compatible with the public interest, with sound financial practices, and with the proper performance by Columbus of service as a public service corporation, and will not impair Columbus' ability to perform the service.

5. The financing approved herein is for the purposes stated in the application, is reasonably necessary for those purposes and such purposes are not reasonably chargeable to operating expenses

1 or to income.

2 **ORDER**

3 IT IS THEREFORE ORDERED that Columbus Electric Cooperative Inc.'s request for
4 Arizona Corporation Commission approval of Loan No. NM 25 AE61 Luna, dated November 25,
5 1997, in the original amount of \$3,289,000; Loan No. NM 25 AG61 Luna, dated October 22, 2002, in
6 the original amount of \$7,902,000; and Loan No. NM 23 AH61 Luna, dated April 22, 2008, in the
7 original amount of \$12,866,000, is granted and approval is confirmed, effective as of the loans'
8 origination dates.

9 IT IS FURTHER ORDERED that Columbus Electric Cooperative, Inc. is authorized to
10 refinance approximately \$3,213,431 of RUS debt with CFC refinancing notes in amount(s) not to
11 exceed the remaining outstanding balance(s) at the date refinanced, with maturity dates and amounts
12 not significantly different than those contemplated by Exhibit C of Columbus Electric Cooperative
13 Inc.'s filing, and at an effective average interest rate not to exceed 4.5 percent per year.

14 IT IS FURTHER ORDERED that Columbus Electric Cooperative, Inc. is authorized to
15 pledge its assets in the State of Arizona pursuant to A.R.S. § 40-285 in connection with any
16 indebtedness authorized in this proceeding.

17 IT IS FURTHER ORDERED that any unused authorization to refinance debt granted herein
18 shall expire on December 31, 2012.

19 IT IS FURTHER ORDERED that Columbus Electric Cooperative, Inc. is authorized to
20 engage in any transaction and to execute any documents necessary to effectuate the authorizations
21 granted herein.

22 IT IS FURTHER ORDERED that as a compliance item in this matter, Columbus Electric
23 Cooperative, Inc. shall file with Docket Control, within 60 days of the execution of any financing
24 transaction authorized herein, a notice confirming that such execution has occurred and a certification
25 by an authorized officer that the terms of the financing fully comply with the authorizations granted.

26 IT IS FURTHER ORDERED that Columbus Electric Cooperative, Inc. shall make available
27 to Staff, upon request, a copy of any loan documents executed pursuant to the authorization granted
28 herein.

1 IT IS FURTHER ORDERED that Columbus Electric Cooperative, Inc. and Staff shall consult
2 with each other and file procedural recommendations for the resolution of the Declaratory Petition.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN _____ COMMISSIONER _____

8
9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER _____

10
11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2012.

16
17 ERNEST G. JOHNSON
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
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SERVICE LIST FOR:

COLUMBUS ELECTRIC COOPERATIVE, INC.

DOCKET NO.:

DOCKET NO. E-01851A-11-0415

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